

## Update: Adoption Proceedings Benchbook

### CHAPTER 2

### Freeing a Child for Adoption

#### 2.13 Termination Pursuant to a Step-Parent Adoption

##### C. Grandparent Visitation

In *DeRose v DeRose*, 469 Mich 320, 333–334 (2003), the Michigan Supreme Court held that MCL 722.27b (grandparent visitation) was unconstitutional because the statute failed to require that the trial court give deference to a fit parent’s decision regarding grandparent visitation. Effective January 3, 2005, 2004 PA 542 amended MCL 722.27b and incorporated the *DeRose* Court’s holding by requiring a trial court to give deference to a fit parent’s determination. It is now presumed that a fit parent’s decision to deny grandparent visitation does not create a substantial risk of harm to the child’s mental, physical, or emotional health. A grandparent must overcome that presumption and prove by a preponderance of the evidence\* that the parent’s decision to deny grandparent visitation creates a “substantial risk of harm to the child’s mental, physical, or emotional health.” MCL 722.27b(4)(b). On page 64, delete the quote of MCL 722.27b(1) and add the following text:

MCL 722.27b(1) states:

“A child’s grandparent may seek a grandparenting time order under 1 or more of the following circumstances:

“(a) An action for divorce, separate maintenance, or annulment involving the child’s parents is pending before the court.

“(b) The child’s parents are divorced, separated under a judgment of separate maintenance, or have had their marriage annulled.

“(c) The child’s parent who is a child of the grandparents is deceased.

\*If an appellate court determines in a “final and nonappealable judgment” that this standard of proof is unconstitutional, then grandparents seeking visitation must provide clear and convincing proof that the parent’s decision to deny grandparent visitation creates a substantial risk of harm to the child’s mental, physical, or emotional health. MCL 722.27b(4)(c).

“(d) The child’s parents have never been married, they are not residing in the same household, and paternity has been established by the completion of an acknowledgment of parentage under the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013, by an order of filiation entered under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, or by a determination by a court of competent jurisdiction that the individual is the father of the child.

“(e) Except as otherwise provided in subsection (13) [governing placement of a child for adoption, quoted below], legal custody of the child has been given to a person other than the child’s parent, or the child is placed outside of and does not reside in the home of a parent.

“(f) In the year preceding the commencement of an action under subsection (3) for grandparenting time, the grandparent provided an established custodial environment for the child as described in [MCL 722.27], whether or not the grandparent had custody under a court order.”

MCL 722.27b(13) states:

“Except as otherwise provided in this subsection, adoption of a child or placement of a child for adoption under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, terminates the right of a grandparent to commence an action for grandparenting time with that child. Adoption of a child by a stepparent under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, does not terminate the right of a grandparent to commence an action for grandparenting time with that child.”

## CHAPTER 6

### Formal Placement and Action on the Adoption Petition

#### 6.7 Grandparent Visitation

In *DeRose v DeRose*, 469 Mich 320, 333–334 (2003), the Michigan Supreme Court held that MCL 722.27b (grandparent visitation) was unconstitutional because the statute failed to require that the trial court give deference to a fit parent’s decision regarding grandparent visitation. Effective January 3, 2005, 2004 PA 542 amended MCL 722.27b and incorporated the *DeRose* Court’s holding by requiring a trial court to give deference to a fit parent’s determination. It is now presumed that a fit parent’s decision to deny grandparent visitation does not create a substantial risk of harm to the child’s mental, physical, or emotional health. A grandparent must overcome that presumption and prove by a preponderance of the evidence\* that the parent’s decision to deny grandparent visitation creates a “substantial risk of harm to the child’s mental, physical, or emotional health.” MCL 722.27b(4)(b). On page 206, delete the quote of MCL 722.27b(1) and add the following text:

MCL 722.27b(1) states:

“A child’s grandparent may seek a grandparenting time order under 1 or more of the following circumstances:

“(a) An action for divorce, separate maintenance, or annulment involving the child’s parents is pending before the court.

“(b) The child’s parents are divorced, separated under a judgment of separate maintenance, or have had their marriage annulled.

“(c) The child’s parent who is a child of the grandparents is deceased.

“(d) The child’s parents have never been married, they are not residing in the same household, and paternity has been established by the completion of an acknowledgment of parentage under the acknowledgment of parentage act, 1996 PA305, MCL 722.1001 to 722.1013, by an order of filiation entered under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, or by a determination by a court of competent jurisdiction that the individual is the father of the child.

\*If an appellate court determines in a “final and nonappealable judgment” that this standard of proof is unconstitutional, then grandparents seeking visitation must provide clear and convincing proof that the parent’s decision to deny grandparent visitation creates a substantial risk of harm to the child’s mental, physical, or emotional health. MCL 722.27b(4)(c).

“(e) Except as otherwise provided in subsection (13) [governing placement of a child for adoption, quoted below], legal custody of the child has been given to a person other than the child’s parent, or the child is placed outside of and does not reside in the home of a parent.

“(f) In the year preceding the commencement of an action under subsection (3) for grandparenting time, the grandparent provided an established custodial environment for the child as described in [MCL 722.27], whether or not the grandparent had custody under a court order.”

MCL 722.27b(13) states:

“Except as otherwise provided in this subsection, adoption of a child or placement of a child for adoption under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, terminates the right of a grandparent to commence an action for grandparenting time with that child. Adoption of a child by a stepparent under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, does not terminate the right of a grandparent to commence an action for grandparenting time with that child.”